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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

MICHAEL BENDER, *et al.*,
Petitioners,

v.

THE WILLIAMSPORT AREA SCHOOL DISTRICT, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF OF AMICUS CURIAE AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS

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BRIEF OF AMICUS CURIAE AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS

INTEREST OF AMICUS CURIAE

The American Association of School Administrators ("AASA") is the national professional organization for local school district administrators and other educators in our nation's public schools. AASA's members include nearly 18,000 school district superintendents, other school district administrators, school principals and other building level administrators, and educational administrators from other local, regional, state, and national educational agencies.

The resolution of this case, particularly in light of its possible ramifications concerning the constitutionality of the Equal Access Act, Pub. L. No. 98-377 (1984), is a matter of vital concern to AASA and its members. The Court of Appeals properly held that a local school district was not required to include a prayer club in its extracurricular activity program. If this decision is reversed, either directly by a decision of this Court or effectively through continued implementation of the Equal Access Act, it will be AASA's members who will shoulder the front-line responsibility for implementing the results.

Those results, AASA is convinced, could be disastrous for extracurricular programs in public secondary schools and seriously damaging to public education in America. Properly supervised extracurricular activities form an important part of the overall educational function of junior and senior high schools across the United States. The level of official involvement necessary by school personnel to supervise religious groups adequately in a secondary school setting, along with the message of official approval which would be conveyed, would render the results sought by petitioners violative of the Establishment Clause of the First Amendment. Even apart from the constitutional issues, however, mandating the inclusion of religious activities within school districts' extracurricular programs would require constant monitoring to ensure that such activities are voluntary and student-initiated, would engender significant school and community strife, would interfere with the proper conduct of extracurricular programs, and would lead many school districts to eliminate altogether many valuable extracurricular activities. AASA thus urges this Court to affirm the decision of the Court of Appeals in this case.[1]

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[1] This brief is submitted by AASA pursuant to the unanimous vote of its Executive Committee and with the written consent of the parties, copies of which have been filed with the Clerk of this Court.

SUMMARY OF ARGUMENT

Unlike the situation in colleges and universities, which often provide open forums for student activities with little or no control or guidance by administrators, extracurricular student activities in junior high and high schools throughout the United States are part of the schools' educational program and are subject to careful faculty and administrative supervision. Educators consider such activities an important part of the educational and growth process for adolescents. Supervision of such activities is essential, however, both because of the educational value of supervision itself and because of the age and impressionability of secondary school students, who may be as young as 11 or 12 in some states.

In this context, mandating that secondary schools include religious activities within their extracurricular program would violate important principles of constitutional law and educational practice. Students would be likely to perceive a message of state endorsement of such religious activities. Continuing state surveillance would be required to ensure that First Amendment restrictions are respected, and continuing relationships between school officials and religious groups would develop. The decisions of this Court make it clear that these results violate the Establishment Clause of the First Amendment. *See Lemon* v. *Kurtzman*, 403 U.S. 602 (1971); *McCollum* v. *Board of Education*, 333 U.S. 203 (1948).

Educationally, such required inclusion of religious activities, particularly when coupled with the other restrictions imposed by the Equal Access Act, would threaten the important role of extracurricular programs in American secondary schools. Schools would be required to spend considerable time and effort in policing religious groups to ensure that they are voluntary and student initiated. Instead of providing helpful guidance to students, school staff would become monitors who, under the

Equal Access Act, could not participate in activities. Despite school efforts, school disruption and community strife would undermine the schools' educational program, as has already occurred in a number of communities as a result of the Equal Access Act. Many schools would probably eliminate valuable extracurricular programs altogether to avoid such problems, as several have already done. AASA submits that these consequences must be avoided. The decision below should be affirmed.

ARGUMENT

I. Properly Supervised Extracurricular Student Activities Are An Integral Part of the Educational Program in American Secondary Schools

This Court has previously recognized the important role of public elementary and secondary schools. Middle schools, junior high schools, and high schools, which educate students as young as 11 or 12 in some states, are not "marketplace[s] of ideas" or forums for "campus debate" as are colleges and universities. *Healy* v. *James*, 408 U.S. 169, 180, 181-82 (1972). Instead, secondary schools rely on structured programs for imparting knowledge and "inculcating fundamental values necessary to the maintenance of a democratic political system." *Board of Education* v. *Pico*, 457 U.S. 853, 864 (1982) (Brennan, J., for the plurality).[2]

At the secondary school level, therefore, extracurricular activities are not quasi-independent functions which happen to occur at a school forum and with which the school is not "identified in any way," as on a college campus. *Widmar* v. *Vincent*, 454 U.S. 263, 274 n.14 (1981). On the contrary, extracurricular activities in secondary schools are carefully supervised by faculty

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[2] *Accord id.* at 876 (Blackmun, J., concurring); *id.* at 889 (Burger, C.J., dissenting); *id.* at 896 (Powell, J., dissenting); *id.* at 913-14 (Rehnquist, J., dissenting); *Plyler* v. *Doe*, 457 U.S. 202, 221 (1982).

and administrators, promote important educational objectives, and are "integral parts of the school program." [3]

Various types of activities may be included in a secondary school's extracurricular program. Some, such as mathematics clubs and school bands, grow out of or are related directly to aspects of the school's regular classroom curriculum. Others, such as Junior Achievement clubs, hiking clubs, chess clubs, and key clubs or other community service organizations, may not be curriculum-related. In either event, however, strong educational evidence indicates that secondary school extracurricular programs can help achieve important educational benefits for adolescents, such as developing responsibility, leadership and social skills, increasing student motivation and self-esteem, promoting positive extra-class relationships, and helping inculcate community values.[4] One educator

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[3] F. Gruber & T. Beatty, *Secondary School Activities* 13 (1954) (hereinafter "Gruber"). *Accord* J. Yarworth & W. Gauthier, Jr., *Relationship of Student Self-Concept and Selected Personal Variables to Participation in School Activities*, 70 J. Educ. Psychology 335 (1978) (hereinafter "Yarworth") (explaining that "American schools have stressed extra- and co-curricular activities as an integral part of the school program"). Indeed, educators have debated the question of whether such activities should be called "extracurricular" at all, or whether other terms should be used which make it clear that such activities "are an important part of the educational program." R. Frederick, *The Third Curriculum: Student Activities in American Education* 5 (1959) (hereinafter "Frederick"). In some districts, such as the Williamsport school district in this case, such activities in fact take place during the regular school day. *Bender* v. *Williamsport Area School District*, 741 F.2d 538, 543 (3d Cir. 1984).

[4] *See, e.g.*, Yarworth at 342; Gruber at 12-14; Frederick at 33-46, 52-54. *See also* D. Armstrong, K. Henson, & T. Savage, *Education: An Introduction* 406-07 (2d ed. 1985) (hereinafter "Armstrong"); A. Ornstein & D. Levine, *An Introduction to the Foundations of Education* 337-38 (3d ed. 1985) (hereinafter "Ornstein"); H. McGown, *Extracurricular Activities* 13-17 (1952) (hereinafter "McGown"); L. Otto, *Extracurricular Activities*, in *Improving Educational Standards and Productivity* (Walberg ed. 1982).

has even suggested that "perhaps the school's activity program comes more nearly [to] supplying the basic educational needs to students than does the regular academic course." [5]

Educators have consistently emphasized, however, the importance of guidance and supervision by faculty and administrators if extracurricular programs in secondary schools are to succeed.[6] This is true for several reasons. First, particularly for younger students, supervision and guidance by school staff are important to assist in organizing and implementing the activities themselves, to provide encouragement, to safeguard students' health and safety, and to maintain discipline as needed. In addition, evidence has shown that one of the important benefits to students of extracurricular activities is the opportunity to interact with teachers and administrators out of the classroom in a less structured setting, which helps adolescents learn to relate better with adults and aids student-teacher relationships in the classroom.[7] While teachers assume a more advisory and less dominant role in extracurricular activities than in the classroom, their

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[5] G. Graham, *Student Activities: An Overview and a Rationale*, National Association of Secondary School Principals Bulletin 3 (Oct., 1964) (hereinafter "Graham") (quoting A. Unruh, *Some Criteria for Evaluating a Program of Activities*, 21 School Activities 3 (Sept. 19[illegible])).

[6] *See, e.g.*, McGown at 4, 10, 21; Frederick at 8, 219-38; Armstrong at 401; E. Boyer, *High School: A Report on Secondary Education in America* 210 (1983). *Accord Bender*, 741 F.2d at 544 & n.10 (testimony of Williamsport High School principal that student club advisors, who are usually faculty members, generally participate in student group meetings and are to "be there as somebody who's going to help the students"). A recent national AASA survey found that over 91% of the responding school districts require supervision of extracurricular activities by school staff. AASA, *Equal Access: Interpretation and Implementation Guidelines* 16 (1984) (hereinafter "AASA Report").

[7] *See* Ornstein at 338; Graham at 2; Frederick at 8, 52.

function remains both time-consuming and important, as demonstrated by the fact that school districts generally provide extra compensation to teachers for such efforts.[8] As one educator has written, "[t]o be a true student activity any enterprise must be sponsored by a member or members of the professional staff." [9]

These educational principles have important implications for the decision of this Court in this case. Both because of the age and impressionability of the students involved and because of the integral part played by extracurricular activities in the secondary school educational program, the "open forum"-type analysis applied on the college campus in *Widmar* v. *Vincent*, *supra*, is inappropriate here. Instead, this Court should consider the devastating constitutional and educational consequences of granting the petitioners' request that school districts be forced to include religious activities within the established secondary school extracurricular program. In this context, AASA submits, it is clear that the decision below should be affirmed.

II. Mandating the Inclusion of Religious Activities in Public Secondary School Extracurricular Programs Would Violate the Establishment Clause of the First Amendment

Precisely because of the integral role of extracurricular activities in secondary schools, and because of the age and impressionability of the students enrolled, the threat posed by religious activity to the Establishment Clause is much greater than in the university setting. Mandating the inclusion of religious activities in secondary school extracurricular programs would violate the Establishment Clause because it would have the effect of ad-

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[8] *See* Educational Research Service, *Extra Pay for Extra Duties of Teachers 1982-83* (1983); Armstrong at 412-14.

[9] *See* Frederick at 8. *Accord* McGown at 21.

vancing religion and fostering excessive government entanglement with religion.

A. Required Inclusion of Religious Activities Would Have the Primary Effect of Advancing Religion

One of the well-established criteria for determining the constitutionality of a government practice under the Establishment Clause is whether it would have the "primary effect" of advancing or inhibiting religion. *Lemon*, 403 U.S. at 612-13. As Justice O'Connor has recently explained, this test asks whether, "irrespective of government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval" of religion. *Lynch* v. *Donnelly*, 104 S.Ct. 1355, 1368 (1984) (O'Connor, J., concurring).

In *Widmar* v. *Vincent*, *supra*, this Court concluded that a policy of permitting religious groups to use an open forum established on a university campus would confer only "incidental" benefits upon religion and would not violate the Establishment Clause. *Widmar*, 454 U.S. at 274. An important reason for the Court's ruling was the fact that the university was doing no more than holding open a forum for student groups, and the university explicitly disavowed any sponsorship or approval of such organizations; thus, permitting religious groups to meet would confer no "imprimatur of state approval." *Id.* In addition, the Court specifically noted that university students are "young adults" who are "less impressionable than younger students and should be able to appreciate that the University's policy is one of neutrality toward religion." *Id.* at 274 n.14.[10]

In this case, however, the reasons that led to the Court's decision in *Widmar* should lead to precisely the opposite result. Unlike universities, secondary schools view extracurricular activities as an important part of the educa-

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[10] *Accord Marsh* v. *Chambers*, 463 U.S. 783, 792 (1983); *Tilton* v. *Richardson*, 403 U.S. 672, 685-86 (1971).

tional program, and provide sponsorship and guidance for such activities. The activities take place in school classrooms or other facilities, with a faculty advisor who is usually paid for his or her efforts, under school supervision, and shortly before or after classes begin. In the Williamsport school district involved in this case, in fact, the activities occur during scheduled periods within the school day itself, when school attendance is required by law. *See Bender*, 741 F.2d at 553. Requiring the inclusion of religious groups within extracurricular programs would send a strong message of state endorsement of student participation in such activities as part of the school program, in violation of the Establishment Clause.

Petitioners suggest that this problem can be ameliorated through such measures as avoiding use of school bulletin boards or limiting the role of school staff to monitoring and maintaining discipline, and that the school's attitude towards religion could remain neutral. This suggestion is fallacious. Initially, it is extremely questionable whether school faculty and administrators trained and accustomed to helping students in extracurricular activities could achieve the state of robotic noninvolvement apparently contemplated by petitioners. As one teacher placed in such a situation recently explained:

> [I]t is very difficult when people are praying not to pray along and get involved. For the record, I sit and listen. But let's just say that teachers, by nature, like to talk.[11]

In addition, even if individual school officials could somehow be neutral, the government itself would still be sending a strong signal of approval of religious activities. This is because the government would be specifically re-

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[11] New York Times, March 23, 1985, at 26. As discussed in Section II.B *infra*, the monitoring of faculty monitors themselves, which would be required to enforce a rule that faculty not participate in religious activities, would cause excessive government entanglement with religion, in violation of the Establishment Clause.

quiring inclusion of religious activities as part of a school program in schools which would prefer not to do so.[12] Regardless of whether teachers try to be neutral, the government clearly would not. This government "message of endorsement" would violate the Establishment Clause. *Lynch*, 104 S.Ct. at 1368.

Finally, even if it could somehow be said that the government was not functioning jointly with religion through such activities, this Court has recognized that the "mere appearance" of joint exercise "provides a significant symbolic benefit to religion" which may violate the Establishment Clause. *Larkin* v. *Grendel's Den, Inc.*, 459 U.S. 116, 125 (1982). In this case, even if bulletin boards were not used and faculty members were monitors only, the appearance to impressionable adolescents would clearly be one of support and approval for religious activities.[13] This is particularly so because the school would continue to play its traditional supervisory role with respect to other extracurricular activities and student conduct in general. *See Bender*, 741 F.2d at 554-55. While students could theoretically reach the alternative conclusion that the government was simply tolerating religion, the possibility of such an alternative "does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain." *McCollum*, 333 U.S. at 227. This Court has repeatedly recognized the impressionability and vulnerability to peer and adult

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[12] Several instances of such required inclusion of religious activities have already occurred pursuant to the Equal Access Act, leading to serious community problems in a number of school districts. *See* pp. 14-16, *infra*.

[13] As one school superintendent has recently written, such religious activities "would soon be perceived as an integral part of the school's extracurricular and cocurricular programs" and "it would become apparent to all students in the school that religious activity had been authorized and sanctioned." I. Singer, "Equal Access Means Promoting Religion," Education Week, May 28, 1984, at 19 (hereinafter "Singer").

influence of public school students by invalidating other "voluntary" practices which had the effect of advancing religion.[14] In this case, the Court should reach the same result.

B. Required Inclusion of Religious Activities Would Engender Excessive Government Entanglement With Religion

This Court has consistently held that a law or governmental practice violates the Establishment Clause if it fosters an "excessive government entanglement with religion." *Lemon*, 403 U.S. at 612-13; *see also Estate of Thornton* v. *Caldor, Inc.*, No. 83-1158, slip op. at 5-7 (U.S. June 26, 1985); *Walz* v. *Tax Commission*, 397 U.S. 664, 674 (1970). Specifically, excessive entanglement exists where "continuing state surveillance will inevitably be required" to ensure that First Amendment rights and restrictions are respected, or where an "intimate and continuing relationship" between government and religious officials or institutions is created. *Lemon*, 403 U.S. at 619, 621-22.

Mandating inclusion of religious activities in public school extracurricular programs necessarily would foster excessive entanglement. Such activities would occur during the school day, in classrooms or other school facilities, within the context of a school-wide extracurricular program, and under the supervision of a paid school mon-

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[14] *See, e.g., Stone* v. *Graham*, 449 U.S. 39 (1980) (posting of Ten Commandments on classroom wall); *Abington School District* v. *Schempp*, 374 U.S. 203 (1963) (Bible reading in classroom); *Engel* v. *Vitale*, 370 U.S. 421 (1962) (classroom prayers); *McCollum* v. *Board of Education, supra* (religious instruction in schools). *Accord Wallace* v. *Jaffree*, 53 U.S.L.W. 4665, 4671 n.51 (U.S., June 4, 1985). Although it has been suggested that this Court should automatically defer to purported congressional findings in connection with the Equal Access Act concerning the impressionability of high school students, this Court has firmly held that "[d]eference to a legislative finding cannot limit judicial inquiry when First Amendment rights are at stake." *Landmark Communications, Inc.* v. *Virginia*, 435 U.S. 829, 843-44 (1978).

itor.[15] The close relationship between the public schools and religious groups which would result would violate the Establishment Clause, as the Court of Appeals found in this case. *See Bender*, 741 F.2d at 556.

Even more importantly, it is clear that precisely the type of "continuing state surveillance" prohibited by the Establishment Clause would be required if the decision below were reversed. As the Second Circuit suggested in *Brandon, supra*, "surveillance [of religious group meetings] will be required to guarantee that participation in the prayer meetings would always remain voluntary." 635 F.2d at 979.[16] Teachers who monitor religious ac-

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[15] While petitioners have claimed that the use of a school monitor could be dispensed with altogether, this casual suggestion ignores the fact that school officials are legally and educationally responsible for maintaining "safety, order, and a secular schedule." *Bender*, 741 F.2d at 557. *Accord Brandon* v. *Board of Education*, 635 F.2d 971, 979 (2d Cir. 1980), *cert. denied*, 454 U.S. 1123 (1981). Educators writing about extracurricular activities have similarly emphasized the importance of supervision by school officials for such reasons. *See, e.g.*, Frederick at 230-32. It is AASA's experience that very few school districts permit extracurricular activities without a faculty advisor or sponsor. *See* note 6, *supra*.

[16] In fact, the recently-enacted Equal Access Act specifically provides that schools may permit meetings to occur only on a voluntary basis. *See* Equal Access Act, Pub. L. No. 98-377 (1984), Section 1(c)(1). Surveillance would similarly be necessary to enforce other provisions of the Act, such as the requirements that meetings be student-initiated, that nonschool persons not control or regularly attend such meetings, that no school sponsorship occur, and that school employees attend only in a nonparticipatory capacity. *Id.*, Section 1(c)(1), (2), (3), and (5). Controversy over these Equal Access Act provisions has already arisen in several school districts. *See, e.g.*, Newsday, April 9, 1985, at 23 (dispute concerning allegation that nonschool persons were regularly attending or controlling meetings in Hicksville, Long Island district). Although this case does not directly present the question of the constitutionality of the Equal Access Act, this Court's decision will obviously have important ramifications concerning this issue, which several lower courts are already considering. *See* note 24, *infra*.

tivities would themselves need to be monitored to ensure their "acceptance of the limitations imposed by the First Amendment." *Lemon*, 403 U.S. at 619. Such "prophylactic contacts" would involve precisely the "excessive and enduring entanglement between state and church" prohibited by the Establishment Clause. *Id.*

III. Mandating the Inclusion of Religious Activities in Public Secondary School Extracurricular Programs Would Severely Damage Extracurricular Programs and the Overall Educational Capabilities of Secondary Schools

As discussed in Section I above, extracurricular activities provide important educational benefits to students as an integral part of the school program. Serious harm to the role of such activities would in turn impair the ability of our nation's public schools to educate our children effectively. A decision by this Court requiring secondary schools to include religious activities in their extracurricular program would have precisely such a negative effect on our educational process.

Initially, as educators already have recognized with respect to the Equal Access Act, such a requirement would make it impossible for schools to prevent disruptive and potentially dangerous influences on students by outside groups. Educators have long recognized the problems of dual control and other potential "dangers of the close association of the school and special interest groups in the community" through involvement of outside groups with impressionable young students in extracurricular activities.[17] Unfortunately, as educators have recently recognized, serious dangers of improper influence on school-age youngsters are posed by cult groups and other organizations at least claiming to be religious in nature.[18]

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[17] *See* Frederick at 123.

[18] *See* Singer at 19; San Francisco Chronicle, May 1, 1984, at 1 (reporting results of university study showing that "[m]ore than

Even if nonschool persons are excluded physically from school premises in an attempt to ensure that meetings are "student-initiated," one school superintendent has recently warned that:

> [O]ne must be truly naive to assume that requests from students, already recruited by or interested in various religious cults, sects, and denominations will be "student-initiated." In fact, it is more likely that such requests will originate in religious planning offices, and students, acting as middlemen, will convey them to school authorities.[19]

In fact, disputes have already arisen under the Equal Access Act concerning the role of outside persons in controlling or participating in religious group activities.[20] Serious risks are posed concerning the undermining of school authority and undue influence on youngsters.

In addition, as discussed in Section II above, mandating the inclusion of religious groups in extracurricular programs would require monitoring, surveillance, administration, and efforts by school officials to resolve school disputes which would divert the time and attention of teachers and administrators, heighten tensions, and could seriously disrupt the school environment. For example, under the Equal Access Act, reports have occurred of "students with an evangelical mission who are attempting to win converts and to increase their club membership," placing school officials in the extremely difficult

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half the high school students in the Bay Area have been on the receiving end of recruiting drives by members of cult groups," and that the "most successful" efforts occurred on "school grounds" and other territory familiar to students).

[19] Singer at 19.

[20] *See* note 16, *supra*. Similarly, concerns have also been expressed by school officials concerning the possible role of outside persons in political groups, which are also required to have access to facilities at schools which permit other non-curricular activities under the Equal Access Act. *See* Newsday, March 17, 1985, at 6.

position of seeking to prevent undue coercion while respecting students' rights.[21] One public school was reportedly "placed in the position of determining the falsity or truth of religious beliefs" in order to determine if a sect should be "considered detrimental to the well-being of the students" and thus excluded from the school.[22] Disputes have arisen over other issues as well, such as access to school media to announce religious group meetings.[23]

In fact, in the short time since the Equal Access Act was passed last summer, it has already engendered several court battles [24] and a series of bitter disputes among teachers, parents, students, and administrators in school districts around the country.[25] In order to avoid such

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[21] *See* P. Sand, "Equal Access Act Raises Many Questions," MEA Advocate, March 27, 1985, at 24.

[22] *Id.* at 22.

[23] *See* Newsday, March 22, 1985, at 6.

[24] *See Mergens* v. *Board of Education*, No. CV85-U-426 (D. Neb. May 23, 1985) (denying preliminary injunction which would have required school to permit religious club to meet); *Amidei* v. *Spring Branch Independent School Dist.*, No. H-84-7673 (S.D. Tex. April 26, 1985) (granting injunction requiring school to permit religious club to meet); *Student Coalition for Peace* v. *Lower Merion School Dist.*, 596 F. Supp. 169 (E.D. Pa. 1984), memorandum opinion and order on motion for reconsideration (entered Feb. 1, 1985), *appeal docketed*, No. 85-1092 (3d Cir. Feb. 15, 1985) (denying injunction which would have permitted political group to hold rally and exposition on school facilities).

[25] In addition to notes 16 and 20-23, *supra*, *see, e.g.*, Newsday, March 17, 1985, at 6 (discussing disputes in several Long Island, New York school districts which, according to one school board member, have "confused, upset and divided parents" and have pitted "friend against friend and student against student"); Lafayette Journal and Courier, April 28, 1985, at 3 (reporting dispute in Lafayette, Indiana school district which has caused "resentment and anxiety" in community).

strife, many schools and school districts are considering the unfortunate alternative of banning non-curricular related extracurricular groups altogether in order to remove themselves from coverage under the Equal Access Act. One New York school district, for example, abolished a large service club which had been involved in such activities as aiding the elderly and the handicapped in order to prevent the district's schools from falling within the Act's ambit.[26] If the decision below is reversed, many other districts may well follow this example, seriously damaging extracurricular programs and the educational process.

Available evidence demonstrates, moreover, that there is no justification for the disruption and harm to the educational environment which mandatory inclusion of religious activities in extracurricular programs would cause. A 1984 AASA survey revealed that prior to the passage of the Equal Access Act, the issue of religious group access to school facilities had not arisen at all in over 70% of responding school districts, that the issue came up at the school board level in less than 2% of all districts, and that significant controversies leading to litigation had occurred in only five of the nation's 15,600 school districts.[27] Without any federal intrusion, AASA and its members have found, schools have been able to

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[26] *See* Now York Times, March 23, 1985, at 26. In fact, the Equal Access Act could well require that all school districts either abandon altogether all such extracurricular activities which are not curriculum-related or eliminate any school supervision of such activities. The Act provides that where a school permits non-curriculum-related groups to meet, it must avoid any "sponsorship" of all such meetings, which includes "promoting, leading, or participating" in a meeting. Equal Access Act, Sections 1(c)(2), 2(2). Many school districts will undoubtedly choose to eliminate non-curricular activities altogether if they cannot permit teachers to provide the guidance, leadership, and direction necessary for extracurricular activities to perform their proper function.

[27] *See* AASA Report at 14.

respond flexibly to local situations in their own communities based upon local needs, interests, and resources. Administrators report that religious groups have been able to avoid difficulties through such means as locating alternative community facilities or agreeing to use school facilities on the same basis as community groups, without any connection to school-sponsored extracurricular activities. Students who wish to discuss religious issues or to pray individually and voluntarily, of course, may do so. *Cf. Wallace v. Jaffree, supra.* Despite the dire predictions of some parties in this case, moreover, school officials had neither become excessively entangled with religion nor experienced other great difficulties in this area prior to the Equal Access Act, as the Court of Appeals recognized. *See Bender*, 741 F.2d at 556. Particularly in light of these facts, the potentially devastating consequences to public school extracurricular programs which would result from mandatory inclusion of religious activities strongly support the Court of Appeals' decision in this case.

CONCLUSION

For the reasons discussed above, *amicus curiae* American Association of School Administrators urges this Court to affirm the decision below.

Respectfully submitted

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